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Board of Vocational Nursing
and Psychiatric Technicians

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9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2009-205

13 **JEFF STUART OSBORN**
1201 Napa Avenue
14 Chula Vista, CA 91911

A C C U S A T I O N

15 **Vocational Nurse License No. VN 172683**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
22 Technicians, Department of Consumer Affairs.

23 2. On or about June 20, 1995, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 172683 to Jeff Stuart Osborn
25 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on September 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2878 of the Code states:

6 The Board may suspend or revoke a license issued under this chapter [the
7 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the
following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
9 following:

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11 (f) Conviction of a crime substantially related to the qualifications, functions,
12 and duties of a licensed vocational nurse, in which event the record of the conviction
shall be conclusive evidence of the conviction.

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14 10. Section 2878.5 of the Code states:

15 In addition to other acts constituting unprofessional conduct within the meaning
16 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for
a person licensed under this chapter to do any of the following:

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18 (b) Use any controlled substance as defined in Division 10 of the Health and
19 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic
beverages, to an extent or in a manner dangerous or injurious to himself or herself,

20 any other person, or the public, or to the extent that the use impairs his or her ability
21 to conduct with safety to the public the practice authorized by his or her license.

22 (c) Be convicted of a criminal offense involving possession of any narcotic or
23 dangerous drug, or the prescription, consumption, or self-administration of any of the
substances described in subdivisions (a) and (b) of this section, in which event the
record of the conviction is conclusive evidence thereof.

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REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

12. California Code of Regulations, Title 16, section 2522 states:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

(2) Actual or potential harm to the public.

(3) Actual or potential harm to any patient.

(4) Overall disciplinary record.

(5) Overall criminal actions taken by any federal, state or local agency or court.

(6) Prior warnings on record or prior remediation.

1 (7) Number and/or variety of current violations.

2 (8) Mitigation evidence.

3 (9) In case of a criminal conviction, compliance with terms of sentence and/or
4 court-ordered probation.

5 (10) Time passed since the act(s) or offense(s) occurred.

6 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to
7 Penal Code section 1203.4.

8 (12) Cooperation with the Board and other law enforcement or regulatory
9 agencies.

10 (13) Other rehabilitation evidence.

11 **COST RECOVERY**

12 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licensee found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(October 14, 2009 Criminal Convictions for DUI & Hit-Run Driving on July 17, 2009)**

18 14. Respondent has subjected his license to disciplinary action under sections 490 and
19 2878, subdivision (f) of the Code in that Respondent was convicted of crimes that are
20 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.
21 The circumstances are as follows:

22 a. On or about October 14, 2009, in a criminal proceeding entitled *People of*
23 *the State of California v. Jeff Stuart Osborn*, in San Diego County Superior Court, case number
24 S232372, Respondent was convicted on his plea of guilty of violating Vehicle Code sections
25 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or higher; and
26 20002, subdivision (a), hit-run driving, misdemeanors. The court also found true the allegation
27 that Respondent was previously convicted on May 9, 2007, of violating Vehicle Code section
28 23152, subdivision (b), an enhancement under Vehicle Code section 23540. Count 1, violating
Vehicle Code section 23152, subdivision (a) was dismissed pursuant to a plea agreement.

1 b. As a result of the conviction, on or about October 14, 2009, Respondent
2 was sentenced to five years summary probation, and ordered to serve 96 hours in jail, with credit
3 for 1 day, for a total of 48 hours continuous custody. Respondent was further ordered to perform
4 five days in the Public Service Program, enroll in and complete a Multiple Conviction Program
5 and a MADD victim impact panel, pay fines, fees, and restitution in the amount of \$2,755, and
6 comply with the terms of standard DUI probation. At a hearing on April 5, 2010, Respondent's
7 probation was revoked for failure to complete the Public Service Program. Probation was
8 reinstated and continued on the same terms including a requirement to complete two days of
9 public work service.

10 c. The facts that led to the conviction were that on or about the afternoon of
11 July 17, 2009, officers from the Chula Vista Police Department responded to a call to assist a hit
12 and run accident victim. The party who reported the accident was following the suspect,
13 Respondent, and provided Respondent's license plate and vehicle description. Based on the
14 license plate, officers went to Respondent's residence and found his vehicle parked in the
15 driveway. Upon contact with Respondent, it was noted that there was a very strong odor of
16 alcohol emanating from his breath and person from three feet away. Respondent's face was
17 droopy, his eyes were bloodshot and watery, his eyelids were half closed, and he was partially
18 drooling out of the corner of his mouth. His head was slumped on his chest. Respondent was
19 unable to form coherent sentences or respond to the officers' questions. He was unable to stand
20 without assistance and fell over multiple times. Based on his condition, no standardized field
21 sobriety tests were conducted. The victim and the reporting party of the hit and run were brought
22 to the scene and both positively identified Respondent as the person who caused the accident.
23 Respondent was arrested and taken to the Chula Vista Police Department Jail where a blood
24 sample was drawn.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

3 15. Respondent has subjected his license to disciplinary action under section 2878.5,
4 subdivision (b) of the Code in that on or about July 17, 2009, Respondent was under the influence
5 of alcohol in a manner that was dangerous or injurious to himself and others, in that he operated a
6 motor vehicle on a public roadway, caused a collision, and left the scene of the accident as
7 described in paragraph 14, above. Such unprofessional conduct is substantially related to the
8 qualifications, functions, and duties of a licensed vocational nurse.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Criminal Conviction Involving the Consumption of Alcohol)**

11 16. Respondent has subjected his license to disciplinary action under section 2878.5,
12 subdivision (c) of the Code in that on or about October 14, 2009, Respondent pled guilty to and
13 was convicted of driving with a BAC of 0.08 percent or higher, with a prior conviction for the
14 same violation, and hit-run driving, as described in paragraph 14, above. Such unprofessional
15 conduct is substantially related to the qualifications, functions, and duties of a licensed vocational
16 nurse.

17 **DISCIPLINARY CONSIDERATIONS**

18 17. To determine the degree of discipline, if any, to be imposed on Respondent,
19 Complainant alleges:

20 a. On or about May 9, 2007, in a prior criminal proceeding entitled *People of the*
21 *State of California v. Jeff Stuart Osborn*, in San Diego County Superior Court, case number
22 S210505, Respondent was convicted of violating Vehicle Code section 23152, subdivision (a),
23 driving under the influence of alcohol, a misdemeanor.

24 b. In a letter to Respondent dated December 28, 2007, an Enforcement Analyst
25 from the Board advised Respondent that the Board was not going to pursue disciplinary action
26 against his license at that time. However, Respondent was warned that future substantiated
27 reports of similar behavior, or other violations of the law or violations of regulations governing
28 the practice of a vocational nurse, could result in disciplinary action against Respondent's license.

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
4 issue a decision:

5 1. Revoking or suspending Vocational Nurse License Number VN 172683, issued to
6 Jeff Stuart Osborn;

7 2. Ordering Jeff Stuart Osborn to pay the Board of Vocational Nursing and Psychiatric
8 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
9 Business and Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.
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12 DATED: May 17, 2011.

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TERESA BELLO-JONES, J.D., M.S.N., R.N.

14 Executive Officer

Board of Vocational Nursing and Psychiatric Technicians

Department of Consumer Affairs

State of California

Complainant
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